



UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

Date Prepared 11/18/86

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IN THE MATTER OF TEMPORARY :
LABOR CERTIFICATION :
APPLICATION BY JACK STEHL :
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CASE NO. 87-TLC-0001

DECISION AND ORDER

ON AUGUST 13, 1986, EMPLOYER, JACK STEHL, FILED A LABOR CERTIFICATION APPLICATION FOR A TEMPORARY SHEEP HERDER. IN THE APPLICATION (ETA 750) HE REQUIRED THE APPLICANT TO BE IN "GOOD HEALTH" AND THE DUTIES OF THE SHEEP HERDER ARE DESCRIBED AS FOLLOWS:

"TENDS FLOCK OF SHEEP GRAZING ON RANGE OR PASTURE; MOVES SHEEP TO AND ABOUT AREAS ASSIGNED FOR GRAZING; PREVENTS ANIMALS FROM WANDERING OR BECOMING LOST; USES TRAINED DOGS TO ROUND UP STRAYS AND ASSIST IN MOVING FLOCK TO OTHER LOCATIONS, BEDS DOWN SHEEP NEAR CAMPSITE EACH NIGHT; GUARDS FLOCK AGAINST PREDATORY ANIMALS AND EATING . POISONOUS PLANTS; MAY ASSIST IN SHEARING ANIMALS; FEEDS ANIMALS SUPPLEMENTARY RATIONS; INCLUDING SALT RATIONS AND OTHER SIMILAR CHORES ASSOCIATED WITH CARE OF SHEEP, ANIMALS USED IN GUARDING SHEEP AND EQUIPMENT."

IN A LETTER DATED SEPTEMBER 10, 1986, THE REGIONAL ADMINISTRATOR, EMPLOYMENT & TRAINING ADMINISTRATION, U.S. DEPARTMENT OF LABOR INFORMED MR. GEORGE RADOSEVICH, MR. STEHL'S ATTORNEY THAT BEFORE THE APPLICATION IS GRANTED IT IS MR. STEHL'S DUTY TO "INTERVIEW ALL U.S. WORKERS REFERRED BY THE EMPLOYMENT SERVICE" AND "TO DOCUMENT ALL REFERRALS, INTERVIEWS AND RESULTS".

IN A LETTER DATED OCTOBER 7, 1986 MR. RADOSEVICH INFORMED THE REGIONAL ADMINISTRATOR THAT MR. STEHL HAD INTERVIEWED FIVE

APPLICANTS REFERRED. THE RESULTS OF THESE INTERVIEWS WERE:

"JESUS GONZALAS OF CRAIG, COLORADO, 35 YEARS OF AGE, HAS APPARENTLY A VALID SOCIAL SECURITY NO. [5 USC 552(a)(2)(E) redaction notice: Mr. Gonzalas' Social Security number has been redacted.]. WHICH HE OBTAINED SEVERAL YEARS AGO BUT WE UNDERSTAND HE IS AN ILLEGAL ALIEN DRAWING UNEMPLOYMENT MOST OF THE TIME ON THIS NUMBER WE DO NOT WISH TO HIRE AN ILLEGAL PERSON. ALSO WE CALLED HIS FORMER EMPLOYER, JOHN SERVATIUS AT 303-824-3307 WHO SAID "HE IS A REAL BUMMER:"

"DAVID CARLISLE, 28, OF GRAND JUNCTION, COLORADO, CALLED AND SAID HE HAD ONLY HERDED SHEEP FOR ABOUT 2 MONTHS FOR HIS GRANDPARENTS IN NEW MEXICO. HE WAS SUPPOSE TO SEND US THEIR PHONE NUMBER AS A REFERENCE AND HE NEVER DID. ALSO HE SAID HE DIDN'T KNOW IF HE COULD STAND THE COLD HERE. FOR THESE TWO REASONS, WE DO NOT WISH TO HIRE HIM."

"JOE FLETCHER, 56, OF WORLAND, WYOMING. HE GAVE AS REFERENCE FRANK TOLMAN [5 USC 552(a)(2)(E) redaction notice: Mr. Tolman's Social Security has been redacted]., HE HAD ONLY HERDED LAMBS A FEW MONTHS I&I THE SUMMERTIME AND SEEMED O.K., BUT WAS IN AN ACCIDENT WHEN YOUNGER AND HAD A CRIPPLED NECK WHICH PREVENTS HIM FROM DOING ANY HEAVY WORK. SINCE HE WOULD NEED TO BE SHOVELING SNOW HERE IN WINTER, LIFTING GRAIN AND HAY BALES, WRESTLING SHEEP WHEN SHED, LAMBING ETC. WE DO NOT FEEL THAT HE CAN HANDLE THE JOB. HE ALSO HAS KIDNEY STONE ATTACKS."

"CHARLES FIFER 45, CALLED FROM GRAND i JUNCTION, COLORADO. HE GAVE AS REFERENCE WALLACE HALL OF TROTTERS, NORTH DAKOTA AT 701-565-223 MR. FIFER TOLD US HE HEARDED COWS AND SHEEP FOR MR. HALL BUT WHEN WE ASKED MR. HALL ABOUT THE SHEEP, HE SAID HE DID NOT HAVE SHEEP. HE ALSO TOLD ME HE WAS ON PAROLE WITH THE LAW IN COLORADO AND GETS ITCHY FEET TO LEAVE THE JOB. SINCE WE ARE LOOKING FOR A MORE DEPENDABLE PERSON WE DO NOT WANT TO TRY THIS PERSON EITHER."

"CHUCK FIELDS, 56, FROM UTAH, HAS WOODEN LEG. HE GAVE AS A REFERENCE GRANT BLEAFARD OF UTAH, [5 USC 552(a)(2)(E) redaction notice: Mr. Bleafard's Social Security has been redacted]. HE SAID THAT CHUCK DID O.K., BUT COULD NOT RIDE A HORSE DUE TO HIS WOODEN LEG.

BECAUSE OF THE STEEP GROUND THAT HE MUST WALK ON AND THE FACT THAT HE WILL HAVE TO RIDE A HORSE HE IS NOT SUITABLE FOR THE JOB. CHUCK ALSO ADMITTED TO US THAT HE HAS A DRINKING PROBLEM AND GETS ITCHY FEET TO LEAVE THE JOB."

IN A LETTER DATED OCTOBER 14, 1986 THE REGIONAL ADMINISTRATOR DENIED MR. STEHL'S APPLICATION STATING THAT THE REJECTIONS OF GONZALEZ AND FLETCHER WERE BASED ON "MERE ALLEGATIONS" AND THAT WHILE THE REJECTION OF THE OTHER THREE APPEAR JOB-RELATED" IT IS OBVIOUS EMPLOYER EXERTED VERY LITTLE EFFORT IN DETERMINING WHETHER APPLICANTS ACTUALLY POSSESSED THE REQUIRED QUALIFICATIONS FOR THE JOB."

ON OCTOBER 17, 1986 MR. STEHL FILED A REQUEST FOR AN EXPEDITED JUDICIAL-ADMINISTRATIVE REVIEW OF THE DENIAL. A CERTIFIED COPY OF THE CASE FILE REACHED ME ON NOVEMBER 17, 1986. IN THE REQUEST, MR. STEHL STATED THAT A DEPENDABLE AND EXPERIENCED SHEEPHERDER IS CRITICAL TO THE EMPLOYER BECAUSE HE SPENDS MOST OF THE TIME IN ISOLATION AND BECAUSE THE SURVIVAL OF THE SHEEP, PARTICULARLY IN THE HARSH WINTER AND IN THE RUGGED MOUNTAIN TERRAIN, DEPENDS ON THE SHEEPHERDER. MR. STEHL STATED THAT HE HAD INTERVIEWED EACH OF THE FIVE APPLICANTS WHO WERE REJECTED BECAUSE THEY DID NOT HAVE GOOD WORK REFERENCES OR GOOD HEALTH OR SUFFICIENT EXPERIENCE OR ABILITY TO PERFORM THE SHEEPHERDER'S JOB. FINALLY HE ASSERTS THAT IF THE DEPARTMENT OF LABOR REQUIRES VERIFICATION OF THE EMPLOYER'S STATEMENT, THE EMPLOYER WILL BE FORCED TO REQUIRE FROM EACH APPLICANT, LETTERS OF RECOMMENDATIONS, A RESUME, RECENT MEDICAL REPORTS AND PROOF OF U.S. CITIZENSHIP. MR. STEHL ASSERTS THAT IT WOULD BE DIFFICULT TO OBTAIN SUCH DOCUMENTS SINCE THE NORMAL PRACTICE IS FOR THE EMPLOYER TO CALL THE APPLICANT'S FORMER EMPLOYER. IN MR. STEHL'S LETTER TO REGIONAL ADMINISTRATOR ON OCTOBER 7, 1986 HE LISTED THE TELEPHONE NUMBERS OF FOUR OF THE 5 APPLICANTS' FORMER EMPLOYERS. ACCORDING TO MR. STEHL, THE FIFTH APPLICANT, MR. CARLISLE, FAILED TO KEEP HIS PROMISE IN SENDING HIS FORMER EMPLOYER'S PHONE NUMBER.

DISCUSSION AND CONCLUSION

AS REQUIRED BY LAW, MR. STEHL INTERVIEWED THE 5 APPLICANTS REFERRED BY THE EMPLOYMENT SERVICE AND HE GAVE HIS REASONS FOR THEIR REJECTION. ACCORDING TO MR. STEHL, GONZALES AND FIFER WERE REJECTED BECAUSE OF BAD WORK REFERENCES; FLETCHER AND FIELDS WERE REJECTED BECAUSE OF THEIR MEDICAL CONDITIONS; CARLISLE WAS REJECTED

BECAUSE HE SAID HE COULD NOT STAND THE COLD AND ALSO BECAUSE HE DID NOT SUBMIT HIS FORMER EMPLOYER'S PHONE NUMBER AS HE PROMISED. THESE REASONS, IF TRUE, WOULD APPEAR VALID JOB-RELATED REASONS SINCE "BAD WORK REFERENCES" AND "POOR HEALTH" ARE LISTED AS FACTORS WHICH MAY ADVERSELY AFFECT AN APPLICANT'S JOB PERFORMANCE. HOWEVER, THE REGIONAL ADMINISTRATOR IN DENYING CERTIFICATION, APPARENTLY CONCLUDED MR. STEHL'S REASONS ARE SUSPECT SINCE THEY ARE NOT SUPPORTED BY DOCUMENTS SUCH AS APPLICANT'S RESUME AND MEDICAL RECORDS AND THEIR FORMER EMPLOYER'S WRITTEN REFERENCES. THE FACTS IN THIS CASE GIVE ME NO REASON TO DOUBT MR. STEHL'S ASSERTION THAT THESE DOCUMENTS ARE DIFFICULT TO OBTAIN SINCE THE NORMAL PROCEDURE IS FOR THE EMPLOYER TO CALL THE APPLICANT'S FORMER EMPLOYER. I NOTE, MR. STEHL CALLED THE FORMER EMPLOYERS OF FOUR OF THE FIVE APPLICANTS AND THEIR NAMES AND TELEPHONE NUMBERS WERE LISTED IN MR. STEHL'S LETTER DATED OCTOBER 7, 1986 TO THE REGIONAL ADMINISTRATOR. IF THE REGIONAL ADMINISTRATOR HAD DOUBTS ABOUT MR. STEHL'S REASONS HE WAS FREE TO CALL THE SAME PEOPLE TO VERIFY. THIS HE FAILED TO DO. SINCE THERE IS NO EVIDENCE TO CHALLENGE THE REASONS GIVEN FOR THE REJECTION, THEY MUST BE ACCEPTED AT FACT VALUE.

ORDER

CONSEQUENTLY, I MUST REVERSE THE REGIONAL ADMINISTRATOR'S DENIAL OF CERTIFICATION. MR. STEHL'S TEMPORARY LABOR CERTIFICATION APPLICATION IS HEREBY GRANTED.

VICTOR J. CHAO
Administrative Law Judge

Dated: 11/18/86
Washington, D.C.